



# United States Department of the Interior

## BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT

Washington, DC 20240

December 23, 2010

The Honorable Edward J. Markey  
Chairman, Subcommittee on Energy and Environment  
House of Representatives  
Washington, D.C. 20515

Dear Chairman Markey:

Thank you for your letter dated December 21, 2010, regarding various issues raised by the Chemical Safety Board (CSB) with respect to the forensic examination of the Deepwater Horizon Blowout Preventer (BOP) by the Joint Investigation Team (JIT) of the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) and the United States Coast Guard (USCG). Members of JIT have been in communication with CSB about the issues raised in your letter, and I have enclosed a copy of the relevant correspondence. The remainder of this letter summarizes the status of the issues raised by CSB.

First, we are reviewing CSB's concerns regarding Det Norske Veritas' (DNV) involvement of a Transocean employee, Owen McWhorter, as a consultant with respect to the forensic examination of the *Deepwater Horizon* blowout preventer (BOP). The contract with DNV contains a conflict of interest provision, which we take very seriously. The contracting officer has instructed DNV to immediately cease its relationship with Mr. McWhorter, and DNV has complied with this direction. The contracting officer also has directed DNV to provide specific information about DNV's relationship with Mr. McWhorter and the nature of his involvement with the forensic examination. We are pursuing these issues aggressively and will be in communication with your office about them.

Second, CSB is a member of the Technical Working Group (TWG) formed to provide DNV and the JIT with technical input as the forensic examination of the BOP is conducted. The *Deepwater Horizon* BOP is a highly specialized and complex, as well as heavily modified, piece of equipment. The number of personnel who possess expertise with respect to BOPs, as well as familiarity with the history of this BOP in particular, is extremely limited. The TWG was developed – and sanctioned by the Department of Justice and the federal court presiding over the multi-district litigation related to the *Deepwater Horizon* accident – to make this expertise and experience available to the DNV and the JIT during the examination. CSB, as a member of the TWG, has been granted access to the level 3 area (with closest proximity to the BOP) on equal terms with all other parties in the TWG.

Pursuant to accommodations made largely in response to requests by CSB, it is our understanding that participating TWG organizations (including CSB) are permitted to have multiple TWG representatives and to substitute them as organizational needs and safety concerns dictate. At this time, we understand that both Cameron and Transocean have designated multiple TWG representatives who have actively participated in the TWG. However, no more than one representative per TWG organization may participate inside level 3 at any given time. The only exceptions to this rule have been when, as a result of safety concerns during activities involving high pressure, DNV directly requested review and input from Cameron or Transocean TWG members in a manner that allowed more than one organizational representative inside of level 3 because of their specific knowledge of this BOP. We have been further advised that the examiner recognizes that the TWG agreement does not allow hands-on participation in testing by members of the TWG, including by representatives of Cameron and Transocean.

Third, with respect to images of the BOP, the JIT has made available the official photographs and video of the BOP on a controlled Sharepoint site. We have been advised that the site includes thousands of images, videos and documents and will be updated with new material as quickly as possible. Because this material is deemed by certain parties to be confidential and proprietary, it is imperative that the JIT take precautions to preserve it. To this end, the JIT has requested that all TWG members sign a Non-Disclosure Agreement prior to gaining access to the Sharepoint site.

With the exception of the official photography performed by the forensic examiner's team and the FBI's evidence recovery team, evidentiary and intellectual property concerns dictate that there can be no independent photography of the BOP examination. Because the video feed presents images from within the level 3 area—and is provided for observational purposes only—those images, similarly, may not be independently captured by photographing the video feed. It is our understanding that the JIT has been clear about these restrictions from the beginning of the investigation, and these restrictions were developed in close coordination with the Justice Department to maintain the integrity of the evidentiary record of this examination. The site access protocol has been available at the examination site and has been posted on the JIT's homeport page since prior to the commencement of the examination.

Fourth, as to component testing, such as hydraulic or metallurgical tests, we are not aware that the JIT has any analytical results of this testing at the present time. When such data become available, we expect that the JIT will discuss the appropriate means for making this data available to CSB and other participants.

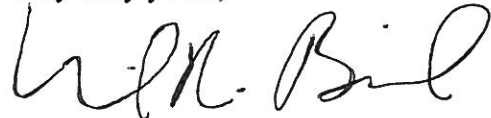
Finally, we would discourage the use of the term “black box” as an analogy for the BOP. The BOP contains no recording device that can be downloaded or reviewed to reconstruct events at the time of the accident or during the subsequent intervention and response efforts. Referring to the BOP as a “black box,” therefore, is inappropriate and inaccurate. The JIT is conducting a series of forensic analytical tests on this device, which it is hoped will provide information about the performance of the BOP, but which

are not anticipated to produce anything akin to a real-time record of the relevant events related to the BOP such as would be captured by a flight data recorder system.

We will continue to work with USCG and Department of Justice to manage the BOP forensic testing and site access protocols consistently for all participants in order to ensure the integrity of evidence and the confidentiality of proprietary material.

We appreciate your interest in this important matter, and we would be happy to provide an update at your convenience. If you have additional questions, please do not hesitate to contact me at 202-208-3500 or Ms. Lyn Herdt, Chief, Bureau of Ocean Energy Management, Regulation and Enforcement, Office of Congressional Affairs, at 202-208-3502.

Very truly yours,

A handwritten signature in black ink that reads "M.R. Bromwich". The signature is written in a cursive, flowing style.

Michael R. Bromwich